

AN ACT

relating to the creation of the offense of electronic transmission of certain visual material depicting a minor and to certain educational programs concerning the prevention and awareness of that offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 37.09, Penal Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) It is a defense to prosecution under Subsection (a) or (d)(1) that the record, document, or thing was visual material prohibited under Section 43.261 that was destroyed as described by Subsection (f)(3)(B) of that section.

SECTION 2. Section 43.26, Penal Code, is amended by adding Subsection (h) to read as follows:

(h) It is a defense to prosecution under Subsection (a) or (e) that the actor is a law enforcement officer or a school administrator who:

(1) possessed the visual material in good faith solely as a result of an allegation of a violation of Section 43.261;

(2) allowed other law enforcement or school administrative personnel to access the material only as appropriate based on the allegation described by Subdivision (1); and

(3) took reasonable steps to destroy the material within an appropriate period following the allegation described by

1 Subdivision (1).

2 SECTION 3. Subchapter B, Chapter 43, Penal Code, is amended
3 by adding Section 43.261 to read as follows:

4 Sec. 43.261. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL
5 MATERIAL DEPICTING MINOR. (a) In this section:

6 (1) "Dating relationship" has the meaning assigned by
7 Section 71.0021, Family Code.

8 (2) "Minor" means a person younger than 18 years of
9 age.

10 (3) "Produce" with respect to visual material includes
11 any conduct that directly contributes to the creation or
12 manufacture of the material.

13 (4) "Promote" has the meaning assigned by Section
14 43.25.

15 (5) "Sexual conduct" has the meaning assigned by
16 Section 43.25.

17 (6) "Visual material" has the meaning assigned by
18 Section 43.26.

19 (b) A person who is a minor commits an offense if the person
20 intentionally or knowingly:

21 (1) by electronic means promotes to another minor
22 visual material depicting a minor, including the actor, engaging in
23 sexual conduct, if the actor produced the visual material or knows
24 that another minor produced the visual material; or

25 (2) possesses in an electronic format visual material
26 depicting another minor engaging in sexual conduct, if the actor
27 produced the visual material or knows that another minor produced

the visual material.

(c) An offense under Subsection (b)(1) is a Class C misdemeanor, except that the offense is:

(1) a Class B misdemeanor if it is shown on the trial of the offense that the actor:

(A) promoted the visual material with intent to harass, annoy, alarm, abuse, torment, embarrass, or offend another; or

(B) except as provided by Subdivision (2)(A), has previously been convicted one time of any offense under this section; or

(2) a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been:

(A) convicted one or more times of an offense punishable under Subdivision (1)(A); or

(B) convicted two or more times of any offense under this section.

(d) An offense under Subsection (b)(2) is a Class C misdemeanor, except that the offense is:

(1) a Class B misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted one time of any offense under this section; or

(2) a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted two or more times of any offense under this section.

(e) It is an affirmative defense to prosecution under this section that the visual material:

(1) depicted only the actor or another minor:

(A) who is not more than two years older or younger than the actor and with whom the actor had a dating relationship at the time of the offense; or

(B) who was the spouse of the actor at the time of the offense; and

(2) was promoted or received only to or from the actor and the other minor.

(f) It is a defense to prosecution under Subsection (b)(2) that the actor:

(1) did not produce or solicit the visual material;

(2) possessed the visual material only after receiving the material from another minor; and

(3) destroyed the visual material within a reasonable amount of time after receiving the material from another minor.

(g) If conduct that constitutes an offense under this section also constitutes an offense under another law, the defendant may be prosecuted under this section, the other law, or both.

(h) Notwithstanding Section 51.13, Family Code, a finding that a person has engaged in conduct in violation of this section is considered a conviction for the purposes of Subsections (c) and (d).

SECTION 4. Subsection (b), Section 51.03, Family Code, is amended to read as follows:

(b) Conduct indicating a need for supervision is:

(1) subject to Subsection (f), conduct, other than a

1 traffic offense, that violates:

2 (A) the penal laws of this state of the grade of
3 misdemeanor that are punishable by fine only; or

4 (B) the penal ordinances of any political
5 subdivision of this state;

6 (2) the absence of a child on 10 or more days or parts of
7 days within a six-month period in the same school year or on three or
8 more days or parts of days within a four-week period from school;

9 (3) the voluntary absence of a child from the child's
10 home without the consent of the child's parent or guardian for a
11 substantial length of time or without intent to return;

12 (4) conduct prohibited by city ordinance or by state
13 law involving the inhalation of the fumes or vapors of paint and
14 other protective coatings or glue and other adhesives and the
15 volatile chemicals itemized in Section 485.001, Health and Safety Code;

16 (5) an act that violates a school district's
17 previously communicated written standards of student conduct for
18 which the child has been expelled under Section 37.007(c),
19 Education Code; ~~[ex]~~

20 (6) conduct that violates a reasonable and lawful
21 order of a court entered under Section 264.305; or

22 (7) conduct that violates Section 43.261, Penal Code.

23 SECTION 5. The heading to Chapter 6, Code of Criminal
24 Procedure, is amended to read as follows:

25 CHAPTER SIX. PREVENTING OFFENSES BY THE ACT OF MAGISTRATES AND
26 OTHER OFFICERS; EDUCATION CONCERNING CONSEQUENCES OF CERTAIN

27 OFFENSES

1 SECTION 6. Chapter 6, Code of Criminal Procedure, is
2 amended by adding Article 6.09 to read as follows:

3 Art. 6.09. EDUCATIONAL PROGRAMS CONCERNING CERTAIN
4 OFFENSES COMMITTED BY MINORS; MANDATORY COURT ATTENDANCE. (a) In
5 this article, "parent" means a natural or adoptive parent, managing
6 or possessory conservator, or legal guardian. The term does not
7 include a parent whose parental rights have been terminated.

8 (b) This article applies to a defendant who has not had the
9 disabilities of minority removed and has been charged with an
10 offense under Section 43.261, Penal Code.

11 (c) The judge of a county court:

12 (1) must take the defendant's plea in open court; and

13 (2) shall issue a summons to compel the defendant's
14 parent to be present during:

15 (A) the taking of the defendant's plea; and

16 (B) all other proceedings relating to the case.

17 (d) If a county court finds that a defendant has committed
18 an offense under Section 43.261, Penal Code, the court may enter an
19 order requiring the defendant to attend and successfully complete
20 an educational program described by Section 37.218, Education Code,
21 or another equivalent educational program.

22 (e) A court that enters an order under Subsection (d) shall
23 require the defendant or the defendant's parent to pay the cost of
24 attending an educational program under Subsection (d) if the court
25 determines that the defendant or the defendant's parent is
26 financially able to make payment.

27 SECTION 7. The heading to Article 38.45, Code of Criminal

Procedure, is amended to read as follows:

Art. 38.45. EVIDENCE DEPICTING OR DESCRIBING ABUSE OF OR SEXUAL CONDUCT BY ~~[THAT CONSTITUTES]~~ CHILD OR MINOR ~~[PORNOGRAPHY]~~.

SECTION 8. Subsection (a), Article 38.45, Code of Criminal Procedure, is amended to read as follows:

(a) During the course of a criminal hearing or proceeding, the court may not make available or allow to be made available for copying or dissemination to the public property or material:

(1) that constitutes child pornography, as described by Section 43.26(a)(1), Penal Code;

(2) the promotion or possession of which is prohibited under Section 43.261, Penal Code; or

(3) that is described by Section 2 or 5, Article 38.071, of this code.

SECTION 9. The heading to Article 39.15, Code of Criminal Procedure, is amended to read as follows:

Art. 39.15. DISCOVERY OF EVIDENCE DEPICTING OR DESCRIBING ABUSE OF OR SEXUAL CONDUCT BY ~~[THAT CONSTITUTES]~~ CHILD OR MINOR ~~[PORNOGRAPHY]~~.

SECTION 10. Subsection (a), Article 39.15, Code of Criminal Procedure, is amended to read as follows:

(a) In the manner provided by this article, a court shall allow discovery under Article 39.14 of property or material:

(1) that constitutes child pornography, as described by Section 43.26(a)(1), Penal Code;

(2) the promotion or possession of which is prohibited under Section 43.261, Penal Code; or

1 (3) that is described by Section 2 or 5, Article
2 38.071, of this code.

3 SECTION 11. Article 42.12, Code of Criminal Procedure, is
4 amended by adding Section 13H to read as follows:

5 Sec. 13H. DEFENDANTS PLACED ON COMMUNITY SUPERVISION FOR
6 ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL. (a) In this
7 section, "parent" means a natural or adoptive parent, managing or
8 possessory conservator, or legal guardian. The term does not
9 include a parent whose parental rights have been terminated.

10 (b) If a judge grants community supervision to a defendant
11 who is convicted of or charged with an offense under Section 43.261,
12 Penal Code, the judge may require as a condition of community
13 supervision that the defendant attend and successfully complete an
14 educational program described by Section 37.218, Education Code, or
15 another equivalent educational program.

16 (c) The court shall require the defendant or the defendant's
17 parent to pay the cost of attending an educational program under
18 Subsection (b) if the court determines that the defendant or the
19 defendant's parent is financially able to make payment.

20 SECTION 12. Article 45.0215, Code of Criminal Procedure, is
21 amended by amending Subsection (a) and adding Subsection (a-1) to
22 read as follows:

23 (a) This article applies to [if] a defendant who has not had
24 the disabilities of minority removed and has been:

25 (1) charged with an offense other than an offense
26 under Section 43.261, Penal Code, if the defendant is younger than
27 17 years of age; or

(2) charged with an offense under Section 43.261, Penal Code, if the defendant is younger than 18 years of age.

(a-1) The ~~[and has not had the disabilities of minority removed, the]~~ judge or justice:

(1) must take the defendant's plea in open court; and

(2) shall issue a summons to compel the defendant's parent, guardian, or managing conservator to be present during:

(A) the taking of the defendant's plea; and

(B) all other proceedings relating to the case.

SECTION 13. The heading to Article 45.0216, Code of Criminal Procedure, is amended to read as follows:

Art. 45.0216. EXPUNCTION OF CERTAIN CONVICTION RECORDS ~~[OF CHILDREN]~~.

SECTION 14. Article 45.0216, Code of Criminal Procedure, is amended by amending Subsections (b), (d), and (f) and adding Subsection (f-1) to read as follows:

(b) A person may ~~[convicted of not more than one offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child may, on or after the person's 17th birthday,]~~ apply to the court in which the person ~~[child]~~ was convicted to have the conviction expunged as provided by this article on or after the person's 17th birthday if:

(1) the person was convicted of not more than one offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child; or

(2) the person was convicted only once of an offense under Section 43.261, Penal Code.

(d) The request must contain the person's statement that the person was not convicted [~~while the person was a child~~] of any additional offense or found to have engaged in conduct indicating a need for supervision as described by Subsection (f)(1) or (2), as applicable [~~Section 8.07(a)(4) or (5), Penal Code, other than the offense the person seeks to have expunged~~].

(f) The [~~If the court finds that the person was not convicted of any other offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child, the~~] court shall order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record if the court finds that:

(1) for a person applying for the expunction of a conviction for an offense described by Section 8.07(a)(4) or (5), Penal Code, the person was not convicted of any other offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child; and

(2) for a person applying for the expunction of a conviction for an offense described by Section 43.261, Penal Code, the person was not found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(7), Family Code, while the person was a child.

(f-1) After entry of an [~~the~~] order under Subsection (f), the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose.

SECTION 15. Subchapter B, Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.061 to read as follows:

Art. 45.061. PROCEEDINGS CONCERNING ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR. (a) In this article, "parent" means a natural or adoptive parent, managing or possessory conservator, or legal guardian. The term does not include a parent whose parental rights have been terminated.

(b) If a justice or municipal court finds that a defendant has committed an offense under Section 43.261, Penal Code, the court may enter an order requiring the defendant to attend and successfully complete an educational program described by Section 37.218, Education Code, or another equivalent educational program.

(c) A court that enters an order under Subsection (b) shall require the defendant or the defendant's parent to pay the cost of attending an educational program under Subsection (b) if the court determines that the defendant or the defendant's parent is financially able to make payment.

SECTION 16. Subsections (b) and (d), Section 51.08, Family Code, are amended to read as follows:

(b) A court in which there is pending a complaint against a child alleging a violation of a misdemeanor offense punishable by fine only other than a traffic offense or a violation of a penal ordinance of a political subdivision other than a traffic offense:

(1) except as provided by Subsection (d), shall waive its original jurisdiction and refer the child to juvenile court if:

(A) the complaint pending against the child alleges a violation of a misdemeanor offense under Section 43.261,

Penal Code, that is punishable by fine only; or

(B) the child has previously been convicted of:

(i) [~~(A)~~] two or more misdemeanors punishable by fine only other than a traffic offense;

(ii) [~~(B)~~] two or more violations of a penal ordinance of a political subdivision other than a traffic offense; or

(iii) [~~(C)~~] one or more of each of the types of misdemeanors described in Subparagraph (i) or (ii) [~~Paragraph (A) or (B)~~]; and

(2) may waive its original jurisdiction and refer the child to juvenile court if the child:

(A) has not previously been convicted of a misdemeanor punishable by fine only other than a traffic offense or a violation of a penal ordinance of a political subdivision other than a traffic offense; or

(B) has previously been convicted of fewer than two misdemeanors punishable by fine only other than a traffic offense or two violations of a penal ordinance of a political subdivision other than a traffic offense.

(d) A court that has implemented a juvenile case manager program under Article 45.056, Code of Criminal Procedure, may, but is not required to, waive its original jurisdiction under Subsection (b)(1)(B) [~~(b)(1)~~].

SECTION 17. Section 51.13, Family Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as provided by Subsections (d) and (e)
~~[Subsection (d)]~~, an order of adjudication or disposition in a
 proceeding under this title is not a conviction of crime. Except as
 provided by Chapter 841, Health and Safety Code, an order of
 adjudication or disposition does not impose any civil disability
 ordinarily resulting from a conviction or operate to disqualify the
 child in any civil service application or appointment.

(e) A finding that a child engaged in conduct indicating a
 need for supervision as described by Section 51.03(b)(7) is a
 conviction only for the purposes of Sections 43.261(c) and (d),
 Penal Code.

SECTION 18. Chapter 54, Family Code, is amended by adding
 Section 54.0404 to read as follows:

Sec. 54.0404. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL
 MATERIAL DEPICTING MINOR: EDUCATIONAL PROGRAMS. (a) If a child
 is found to have engaged in conduct indicating a need for
 supervision described by Section 51.03(b)(7), the juvenile court
 may enter an order requiring the child to attend and successfully
 complete an educational program described by Section 37.218,
 Education Code, or another equivalent educational program.

(b) A juvenile court that enters an order under Subsection
 (a) shall require the child or the child's parent or other person
 responsible for the child's support to pay the cost of attending an
 educational program under Subsection (a) if the court determines
 that the child, parent, or other person is financially able to make
 payment.

SECTION 19. Section 58.003, Family Code, is amended by

adding Subsections (c-3) and (c-4) and amending Subsection (d) to read as follows:

(c-3) Notwithstanding Subsections (a) and (c) and subject to Subsection (b), a juvenile court may order the sealing of records concerning a child found to have engaged in conduct indicating a need for supervision that violates Section 43.261, Penal Code, or taken into custody to determine whether the child engaged in conduct indicating a need for supervision that violates Section 43.261, Penal Code, if the child attends and successfully completes an educational program described by Section 37.218, Education Code, or another equivalent educational program. The court may:

(1) order the sealing of the records immediately and without a hearing; or

(2) hold a hearing to determine whether to seal the records.

(c-4) A prosecuting attorney or juvenile probation department may maintain until a child's 17th birthday a separate record of the child's name and date of birth and the date on which the child successfully completed the educational program, if the child's records are sealed under Subsection (c-3). The prosecuting attorney or juvenile probation department, as applicable, shall send the record to the court as soon as practicable after the child's 17th birthday to be added to the child's other sealed records.

(d) The court may grant the relief authorized in Subsection (a), ~~(c-1)~~ (c-1), or (c-3) at any time after final discharge of the person or after the last official action in the case if there was no

1 adjudication, subject, if applicable, to Subsection (e). If the
2 child is referred to the juvenile court for conduct constituting
3 any offense and at the adjudication hearing the child is found to be
4 not guilty of each offense alleged, the court shall immediately and
5 without any additional hearing order the sealing of all files and
6 records relating to the case.

7 SECTION 20. Subsection (a), Section 59.004, Family Code, is
8 amended to read as follows:

9 (a) For a child at sanction level one, the juvenile court or
10 probation department may:

11 (1) require counseling for the child regarding the
12 child's conduct;

13 (2) inform the child of the progressive sanctions that
14 may be imposed on the child if the child continues to engage in
15 delinquent conduct or conduct indicating a need for supervision;

16 (3) inform the child's parents or guardians of the
17 parents' or guardians' responsibility to impose reasonable
18 restrictions on the child to prevent the conduct from recurring;

19 (4) provide information or other assistance to the
20 child or the child's parents or guardians in securing needed social
21 services;

22 (5) require the child or the child's parents or
23 guardians to participate in a program for services under Section
24 264.302, if a program under Section 264.302 is available to the
25 child or the child's parents or guardians;

26 (6) refer the child to a community-based citizen
27 intervention program approved by the juvenile court; ~~and~~

1 (7) release the child to the child's parents or
2 guardians; and

3 (8) require the child to attend and successfully
4 complete an educational program described by Section 37.218,
5 Education Code, or another equivalent educational program.

6 SECTION 21. Subsection (a), Section 61.002, Family Code, is
7 amended to read as follows:

8 (a) Except as provided by Subsection (b), this chapter
9 applies to a proceeding to enter a juvenile court order:

10 (1) for payment of probation fees under Section
11 54.061;

12 (2) for restitution under Sections 54.041(b) and
13 54.048;

14 (3) for payment of graffiti eradication fees under
15 Section 54.0461;

16 (4) for community service under Section 54.044(b);

17 (5) for payment of costs of court under Section
18 54.0411 or other provisions of law;

19 (6) requiring the person to refrain from doing any act
20 injurious to the welfare of the child under Section 54.041(a)(1);

21 (7) enjoining contact between the person and the child
22 who is the subject of a proceeding under Section 54.041(a)(2);

23 (8) ordering a person living in the same household
24 with the child to participate in counseling under Section
25 54.041(a)(3);

26 (9) requiring a parent or guardian of a child found to
27 be truant to participate in an available program addressing truancy

under Section 54.041(f);

(10) requiring a parent or other eligible person to pay reasonable attorney's fees for representing the child under Section 51.10(e);

(11) requiring the parent or other eligible person to reimburse the county for payments the county has made to an attorney appointed to represent the child under Section 51.10(j);

(12) requiring payment of deferred prosecution supervision fees under Section 53.03(d);

(13) requiring a parent or other eligible person to attend a court hearing under Section 51.115;

(14) requiring a parent or other eligible person to act or refrain from acting to aid the child in complying with conditions of release from detention under Section 54.01(r);

(15) requiring a parent or other eligible person to act or refrain from acting under any law imposing an obligation of action or omission on a parent or other eligible person because of the parent's or person's relation to the child who is the subject of a proceeding under this title; ~~[or]~~

(16) for payment of fees under Section 54.0462; or

(17) for payment of the cost of attending an educational program under Section 54.0404.

SECTION 22. Subchapter G, Chapter 37, Education Code, is amended by adding Section 37.218 to read as follows:

Sec. 37.218. PROGRAMS ON DANGERS OF STUDENTS SHARING VISUAL MATERIAL DEPICTING MINOR ENGAGED IN SEXUAL CONDUCT. (a) In this section:

(1) "Bullying" has the meaning assigned by Section 25.0342.

(2) "Cyberbullying" means the use of any electronic communication device to engage in bullying or intimidation.

(3) "Harassment" has the meaning assigned by Section 37.001.

(4) "Sexual conduct" has the meaning assigned by Section 43.25, Penal Code.

(b) The center, in consultation with the office of the attorney general, shall develop programs for use by school districts that address:

(1) the possible legal consequences, including criminal penalties, of sharing visual material depicting a minor engaged in sexual conduct;

(2) other possible consequences of sharing visual material depicting a minor engaged in sexual conduct, including:

(A) negative effects on relationships;

(B) loss of educational and employment opportunities; and

(C) possible removal, if applicable, from certain school programs or extracurricular activities;

(3) the unique characteristics of the Internet and other communications networks that could affect visual material depicting a minor engaged in sexual conduct, including:

(A) search and replication capabilities; and

(B) a potentially worldwide audience;

(4) the prevention of, identification of, responses

1 to, and reporting of incidents of bullying; and

2 (5) the connection between bullying, cyberbullying,
3 harassment, and a minor sharing visual material depicting a minor
4 engaged in sexual conduct.

5 (c) Each school district shall annually provide or make
6 available information on the programs developed under Subsection
7 (b) to parents and students in a grade level the district considers
8 appropriate. Each district shall provide or make available the
9 information by any means the district considers appropriate.

10 SECTION 23. (a) Not later than January 1, 2012, the Texas
11 School Safety Center shall develop the program required under
12 Subsection (b), Section 37.218, Education Code, as added by this
13 Act.

14 (b) Subsection (c), Section 37.218, Education Code, as
15 added by this Act, applies beginning with the 2012-2013 school
16 year.

17 SECTION 24. The change in law made by this Act to Section
18 43.26, Penal Code, applies only to an offense committed on or after
19 the effective date of this Act. An offense committed before the
20 effective date of this Act is covered by the law in effect when the
21 offense was committed, and the former law is continued in effect for
22 that purpose. For purposes of this section, an offense was
23 committed before the effective date of this Act if any element of
24 the offense occurred before that date.

25 SECTION 25. This Act takes effect September 1, 2011.

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S.B. No. 407

David Newkumst

President of the Senate

Joe Straus

Speaker of the House

I hereby certify that S.B. No. 407 passed the Senate on April 14, 2011, by the following vote: Yeas 29, Nays 1; and that the Senate concurred in House amendments on May 27, 2011, by the following vote: Yeas 31, Nays 0.

Daisy Saw

Secretary of the Senate

I hereby certify that S.B. No. 407 passed the House, with amendments, on May 25, 2011, by the following vote: Yeas 145, Nays 0, one present not voting.

Robert Haney

Chief Clerk of the House

Approved:

17 Jun '11

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

4 PM O'CLOCK

JUN 17 2011

Cheryl R. ...

Secretary of State